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WINSTON NICHOLAS CARR

7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF NEW YORK  
9

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 WINSTON NICHOLAS CARR,

14 Defendant.  
15

NO. 13-CR-448 (MKB)

**DEFENDANT'S MOTION TO  
SUPPRESS STATEMENTS**

16 TO: LORETTA E. LYNCH, UNITED STATES ATTORNEY; AND RENA PAUL,  
17 ASSISTANT UNITED STATES ATTORNEY.

18 Defendant Winston Carr, by and through his attorney of record, Assistant Federal  
19 Defender Chase Scolnick, will and hereby does move for an order suppressing  
20 all statements that he made to law enforcement agents on July 3, 2013.

21 This motion is brought on the following grounds: (A) the statements were not the  
22 product of a knowing and intelligent *Miranda* waiver in violation of the Fifth  
23 Amendment; and (B) the statements were not voluntary.  
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2 This motion is based on the attached memorandum of points and authorities, the  
3 files and records in this case, and any additional evidence or argument that may be  
4 presented to the Court at or before the hearing on this motion.  
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6 Respectfully submitted,  
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8 DAVID PATTON  
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Dated: January 22, 2014

By   
CHASE SCOLNICK  
Assistant Federal Defender

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

The indictment charges Winston Nicholas Carr with one count of importation of cocaine in violation of 21 U.S.C. §§ 952(a), 960(a)(1), and one count of possession of cocaine with intent to distribute in violation of 21 U.S.C. §§ 841(a) and 841(b)(1).

Mr. Carr anticipates that, at trial, the government will seek to introduce statements that he allegedly made to law enforcement officers after he was arrested. The post-arrest statements should be suppressed because they were not the product of a knowing and intelligent *Miranda* waiver. They should also be suppressed because they were not voluntary.

### II.

#### STATEMENT OF FACTS

On July 3, 2013, Mr. Carr arrived at the John F. Kennedy International Airport (“JFK”) on a flight from Guyana. An agent from Customs and Border Inspection (“CBP”) selected him for a thorough examination. As part of this examination, she asked Mr. Carr a number of questions regarding his trip and the two “Polo Club” pieces of luggage that he was carrying. She then escorted Mr. Carr to a screening area where she and another agent were conducting inspections of luggage.

During the inspection, the agent noticed that the bottom of the suitcase seemed unusually thick. She ordered Mr. Carr to remain at the inspection area while she x-rayed the luggage. The agent returned and began to tear the luggage apart. After removing the lining of the suitcase, the agent discovered a large package containing a white powder. She then put the luggage back together and she and another agent ordered Mr. Carr to a small room (“detention room”).

The detention room was small and isolated from the general reception area for international travelers. It was apparently part of the CBP compound at JFK.

Consistent with standard operating procedures of the CBP, the officers ordered Mr.

1 Carr to sit on a bench inside the room handcuffed his right hand to a bar on the side of  
2 the bench. The agents then began processing and photographing the cocaine.

3 The room was filled with agents, including Twarowski, Tepper, Czechura,  
4 Finn, and other agents and supervisors who came in and out of the room. They were  
5 in uniform and armed. Some of these officers questioned Mr. Carr. They told him  
6 that he was in a lot of trouble, and that this was a lot of cocaine. They explained to  
7 him that he could help himself by accepting responsibility and helping them make a  
8 controlled delivery of the drugs. To that end, they asked Mr. Carr who he would be  
9 delivering the drugs to and where this person would be picking him up. Mr. Carr  
10 refused to answer the agents questions. The agents continued to question Mr. Carr,  
11 however, and eventually Mr. Carr allegedly said that he himself was responsible for  
12 the offense. The agents continued to pressure Mr. Carr for more information. They  
13 told him that senior agents would soon question him and that he needed to help  
14 himself by confessing to those agents.

15 Shortly thereafter, an agent in plainclothes came into the room. For the first  
16 time that day, the agent informed Mr. Carr of his *Miranda* rights. Mr. Carr told the  
17 agent that he wished to speak to an attorney. In response, the agent told Mr. Carr that  
18 another senior agent would be in charge of the arrest. He also told Mr. Carr that he  
19 could help himself by speaking with this agent.

20 Moments later, the second senior agent entered the room, read Mr. Carr his  
21 *Miranda* rights and attempted to question him. Mr. Carr again invoked his right to  
22 counsel. At this point, all questioning stopped.

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## ARGUMENT

Absent a *Miranda* advisement and knowing and intelligent waiver, a person's statements that are the product of custodial interrogation cannot be used against him in a criminal proceeding. See *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). A person is in custody for *Miranda* purposes if a reasonable person in the same situation would "have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). "Interrogation" is defined as "express questioning" or any activity by law enforcement officers "reasonably likely to elicit an incriminating response." *Rhode island v. Innis*, 446 U.S. 291, 300 (1980).

Here, Mr. Carr was in custody when the agents questioned him. They initially ordered him to wait at the inspection table. After discovering a large package of cocaine hidden inside the luggage, two agents escorted him to the detention room. There, he was isolated from other travelers, handcuffed to a bench, and surrounded by five or more armed, uniformed agents. While the agents inspected and processed the cocaine, they informed him that he was in a lot of trouble and that he needed to help himself. Under these circumstances, no reasonable person would believe that they were free to terminate the questioning and go about their way.

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1 Because these alleged statements were not the product of a knowing and  
2 intelligent *Miranda* waiver, they were obtained in violation of the Fifth Amendment and  
3 must be suppressed.

4 **B. THIS COURT SHOULD SUPPRESS MR. CARR'S STATEMENTS**  
5 **BECAUSE THEY WERE INVOLUNTARY**

6 The Supreme Court has held that, even when the procedural safeguards of  
7 *Miranda* are satisfied, a defendant in a criminal case is deprived of due process of law  
8 if his conviction is founded on involuntary statements. *Arizona v. Fulminante*, 499  
9 U.S. 279, 296 (1991); *Jackson v. Denno*, 378 U.S. 368, 387 (1964). Before the  
10 government may introduce a defendant's statements at trial, the court must conduct a  
11 hearing to determine whether the statements were voluntary. 18 U.S.C. § 3501.

12 The government has the burden of proving that the statements were voluntary  
13 by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 483 (1972). A  
14 confession is involuntary when law enforcement officials acted "such as to overbear  
15 [the accused's] will to resist and bring about confessions not freely determined."  
16 *Rogers v. Richmond*, 365 U.S. 534, 544 (1961).

17 To be considered voluntary, a statement must be the product of the accused's  
18 free will. *Blackburn v. Alabama*, 361 U.S. 199, 208 (1960); *see also Green v. Scully*,  
19 850 F.2d 894, 900 (2d Cir. 1988) ("Is the confession the product of an essentially free  
20 and unconstrained choice by its maker?"). When a defendant's free will is overborne  
21 by outside pressures, a confession is deemed involuntary. *Schneckloth v. Bustamonte*,  
22 412 U.S. 218, 226 (1973). "The test is whether the confession was 'extracted by any  
23 sort of threats or violence, [or] obtained by any direct or implied promises, however  
24 slight, [or] by the exertion of any improper influence.'" *Hutto v. Ross*, 429 U.S. 28,  
25 30 (1976) (quoting *Bram v. United States*, 168 U.S. 532, 542-43 (1897)). The  
26 determination of whether a person's free will was overborne in a particular case  
27 depends on a evaluation of the totality of the circumstances. *Schneckloth*, 412 U.S.  
28 at 226.



1 The statements here were involuntary. As many as six uniformed and armed  
2 agents hovered over Mr. Carr while he was chained to a bench. They told him how  
3 much trouble he was in and that his only way out was to speak with them. They  
4 began questioning him in an effort to get a confession. But Mr. Carr refused to  
5 answer their questions. According to the officers' latest version of events, they  
6 continued questioning him until he allegedly broke down and confessed. Because  
7 this alleged confession was the product of the officers' overreaching and intimidation,  
8 it was involuntary and must be suppressed.

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10 **IV.**

11 **CONCLUSION**

12 For the foregoing reasons, Mr. Carr respectfully requests that the Court  
13 suppress all statements he made to law enforcement officers on July 3, 2013.

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16 Respectfully submitted,

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28 Dated: January 22, 2014

By   
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